

THE EDWIN BAXTER.<sup>1</sup>

## PARK v. THE HULL OF THE EDWIN BAXTER.

(District Court, S. D. New York. June 21, 1887.)

## 1. ADMIRALTY—PRACTICE—INTERROGATORIES.

Under admiralty rule 23 of the supreme court, which requires libelant's interrogatories to be propounded "at the close of the libel," libelant may not, of course, propound interrogatories to the claimant after the filing of the answer.

## 2. SAME—AMENDMENT OF LIBEL.

The libelant's proper practice is to apply to the court for leave to amend his libel, and to add at the close of the amended libel the desired interrogatories.

## 3. SAME—RULES.

Rule 99 of this court is controlled and superseded by rule 23 of the supreme court.

## In Admiralty.

*Wilcox, Adams & Macklin*, for libelants.

*Carpenter & Mosher*, for claimants.

BROWN, J. The claimants having in their answer interposed new matter in avoidance of the allegations of the libel, the libelants propounded interrogatories, under rule 99 of this court, which permitted interrogatories to be propounded by "either party to the other within four days from the putting in of the claim or answer or other pleading." The claimants, under rule 100, have objected to these interrogatories on the ground that they are not allowable under the provisions of the twenty-third rule of the supreme court in admiralty. Rule 99 regulated the practice in this district prior to the adoption of the twenty-third rule of the supreme court in 1844. The latter covers the same general ground as the former; and in the restrictions interposed, requiring the libelant's interrogatories to be propounded "at the close of the libel," it controls and supersedes the former rule of this court. The practice is essentially the same as that in equity, in which the interrogatories are limited to the subjects contained in the libel. Rule 51 of the supreme court, promulgated in 1854, affords to the libelant, in cases like the present, the desired relief in another form, namely, through an amendment of his libel upon application to the court. To such an amended libel, when allowed, the desired interrogatories can be regularly added, under rule 23. See *Taber v. Jenny*, 1 Spr. 315, 316; *Gladding v. Constant*, Id. 75, note; *The David Pratt*, 1 Ware, 497.

The objections to the present interrogatories must, under the rule, therefore, be sustained, and the interrogatories disallowed, except upon an amendment of the libel.

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.

## THE STRAITS OF GIBRALTAR.

DRISCOLL *v.* THE STRAITS OF GIBRALTAR, Her Cargo, etc.HICKS and others *v.* SAME.*(District Court, D. New Jersey. September 10, 1887.)*

## 1. SALVAGE—TOWING BURNING LIGHTER AWAY FROM VESSEL.

While a steamer was discharging a cargo of saltpeter into a lighter, and after about 100 tons had been delivered, the saltpeter on the latter took fire, and spread with such rapidity as to compel the men to abandon the lighter, which was at once cast loose, and drifted under the port quarter of the steamer. The flames rose very high, but the wind blew them from the steamer, which was an iron-built one. There still remained on board the latter about 550 tons of saltpeter. While in this situation, the libellant's tug made fast to the lighter, and pulled her out of the slip, into the river, where she burned to the water's edge in about 40 minutes after first taking fire. *Held*, that the libellant was entitled to salvage.

## 2. SAME—AMOUNT AWARDED.

Five hundred dollars was held to be a proper compensation for salvage services rendered by the tugs of libellant, worth about \$17,000, in pulling a burning lighter loaded with saltpeter away from a steamer valued at \$115,000, there being other tugs present who would have performed the same service.

## 3. SAME—COSTS.

Where the court decrees that libellant is entitled to salvage, he is also entitled to costs, although his original claim may have been exorbitant, the defendant having refused to offer any compensation whatever.

## In Admiralty.

*John Griffin*, for libellant Driscoll and tug Jesse Russell.

*E. D. McCarthy*, for libellant Hicks and tug Harry Roussell.

*Butler, Stillman & Hubbard*, for respondent steam-ship Straits of Gibraltar.

WALES, J. These are libels for salvage services rendered to the British steam-ship Straits of Gibraltar while lying at the Inman pier, Jersey City, on the twenty-sixth of May, 1886. The steamer had discharged into a lighter, fastened to her port side, 1,305 bags of saltpeter, weighing in all 110 tons, and the men had just knocked off work and gone to dinner, when one of the bags on the lighter was discovered to be on fire. Immediately on the alarm being given the chief officer, with two or three of the crew, jumped into the lighter and tried to smother the flames with a tarpaulin, and at the same time the steamer's hose was laid and attached to the donkey-engine. The flames spread with such rapidity that the men were soon driven from the lighter, which was then cast loose from the steamer, and pushed down the slip and towards the river, the steamer's hose in the mean time throwing water on the burning mass, until the lighter passed under the port-quarter of the steamer and lodged with one end near the steamer's rudder, and the other near or close up to the pier. By this time the fire had extended all over the midship, and to within 10 feet of each end of the lighter, which was 80 feet long, and the flames rose as high as the flag-staff and awning of the